



Labor & Employment ADVISORY ■

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California Tosses De Minimis Doctrine for Off-the-Clock Work

After brewing for several months, the California Supreme Court has finally issued its opinion in [Troester v. Starbucks Corporation](#). Reaffirming its pro-employee stance in the wage and hour arena, the California Supreme Court rejected the use of the federal de minimis doctrine as binding on California wage and hour law. The specific question before the court was whether the federal Fair Labor Standards Act's (FLSA) de minimis doctrine applies to claims for unpaid wages under the California Labor Code. While paying some lip service to the notion of issuing a narrow ruling limited to the facts at hand, the court responded with an expansive and resounding "no."

The Federal De Minimis Doctrine

The de minimis doctrine is an established defense under the federal FLSA for insignificant increments of time beyond scheduled working hours that cannot, as a practical matter, be precisely recorded for payroll purposes. In evaluating the applicability of the de minimis doctrine, federal courts examine the following factors: (1) the practical administrative difficulty of recording additional time; (2) the aggregate amount of compensable time; and (3) the regularity of additional time. Applying these factors, most federal courts find amounts of up to 10 minutes of compensable time to be "de minimis" and therefore not recoverable.

The Underlying Facts

The factual scenario before the California Supreme Court is very familiar to many employers in California. Starbucks employee Douglas Troester claimed that Starbucks should have compensated him for the minutes he spent closing the store *after he clocked out*, including transmitting sales information and inventory data to the corporate headquarters, activating the alarm, exiting and locking the store, and walking his employees to their cars per company policy. During his 17-month period of employment, Troester's unpaid time totaled approximately 12 hours and 50 minutes. The unpaid time added up to \$102.67.

Applying the de minimis doctrine, the federal district court granted Starbucks's motion for summary judgment. Troester appealed the decision to the Ninth Circuit Court of Appeals, which withheld a decision on the merits and instead requested that the California Supreme Court resolve an unsettled question in California law: Whether the federal de minimis doctrine applies to claims for unpaid wages under the California Labor Code.

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California Free to Exceed the Scope of Federal Law

When presented with whether the de minimis doctrine applies under California law, the California Supreme Court held that neither the California Labor Code nor the California wage orders have adopted the doctrine. The court also made clear that under California law, employees should be compensated for regularly occurring work that lasts several minutes per day, even if administratively difficult to capture. In arriving at this conclusion, the court began by characterizing the California Labor Code and wage orders as existing for "... the protection of employees..." Thereafter, the court distinguished the history and intent of the federal scheme from that of California's and concluded that where the intent of the laws differs, reliance on federal law is misplaced. Finally, the court explained that in California, employees must be compensated for "all hours worked," which is inconsistent with the very purpose of the de minimis doctrine.

Significantly, the court did not preclude the possibility of applying the de minimis doctrine to certain wage and hour claims brought under California law. In two separate concurring opinions, Justice Cuéller and Justice Kruger explained that the court's decision leaves room for common sense when presented with a different set of facts. However, it is still not clear what employee activities would be so irregular or brief that the time spent would be considered "de minimis."

Workplace Solutions

As a result of *Troester*, the California Supreme Court has now placed the burden on employers to carefully account for "all hours worked." In light of this, employers should consider implementing these best practices:

- Review your pre-shift and post-shift operational procedures to ensure you are scheduling employee work activities to minimize off-the-clock activity.
- Identify the technology you are using to track work time and determine if a more accurate solution exists that can better capture de minimis time. In any potential class action litigation, plaintiffs' counsel will likely retain an expert to testify about methods that could have been reasonably implemented to capture de minimis time.
- Estimate the amount of de minimis time your workforce is spending and be prepared to compensate employees for that time if such technological advances are not available or are prohibitively expensive.
- Revisit any rounding policies that you have implemented that may result in a failure to compensate employees for all the time worked.
- Understand that once time is established as compensable, California courts will place the burden on you, as the employer, to demonstrate why the employee was not fully compensated for such time.

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